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Agenda item 8

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Afghanistan*, Argentina, Austria, Bangladesh*, Belgium*, Bulgaria, Canada, Chile, Colombia, Cyprus*, Czech Republic, Denmark, Dominican Republic, El Salvador, Finland*, France, Germany, Greece*, Hungary*, Ireland, Italy, Liechtenstein*, Luxembourg*, Madagascar, Nepal, Norway*, Poland*, Portugal*, Romania*, Russian Federation, Senegal*, Slovakia*, Spain*, Sweden*, Switzerland*, United Kingdom of Great Britain and Northern Ireland and Uruguay: draft resolution

1997/... Question of arbitrary detention

The Commission on Human Rights,

Reaffirming articles 3, 9, 10 and 29, as well as other relevant provisions of the Universal Declaration of Human Rights,

Recalling articles 9, 10, 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

Taking particular account of the principle of the independence of the judiciary,

Recalling its resolutions 1991/42 of 5 March 1991, 1992/28 of 28 February 1992, 1993/36 of 5 March 1993, 1994/32 of 4 March 1994, 1995/59 of 7 March 1995 and 1996/28 of 19 April 1996,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Bearing in mind that, in accordance with resolution 1991/42, the task of the Working Group on Arbitrary Detention is to investigate cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned,

Having considered the report of the Working Group on Arbitrary Detention (E/CN.4/1997/4 and Add.1-3),

1. Takes note:

(a) Of the work of the Working Group on Arbitrary Detention and its efforts to revise its methods of work, and underlines the initiatives it has taken to strengthen cooperation and dialogue with States and for the establishment of cooperation with all those concerned by the cases submitted to it for consideration, in accordance with its mandate;

(b) Of the importance that the Working Group attaches to coordination with other mechanisms of the Commission on Human Rights, other relevant United Nations bodies and treaty-monitoring bodies, as well as to strengthening the role of the Centre for Human Rights in such coordination, and encourages the Working Group to take all the necessary steps to avoid duplication with those mechanisms, in particular regarding the treatment of the communications it receives and field visits;

(c) Of the report of the Working Group (E/CN.4/1997/4 and Add.1-3);

2. Invites the Working Group in discharging its mandate, to continue:

(a) To seek and gather information from Governments and intergovernmental and non-governmental organizations, as well as from the individuals concerned, their families or their legal representatives;

(b) To re-examine its methods of work, in particular those relating to the admissibility of communications received, to the "urgent appeals" procedure and to the deadlines set for Governments to reply to requests concerning individual cases, and, in the application of the 90-day deadline for replies, to show flexibility as appropriate by granting an extension of this deadline where necessary without, however, prejudging its final conclusions, and to report regularly to the Commission, in its annual report, on these matters;

(c) To carry out its task with discretion, objectivity, impartiality and independence, within the framework of its mandate, and the independent experts to continue to perform their task with rigour,

having regard to the very specific nature of their mandate, and to respond effectively to credible and reliable information that comes before them;

(d) To take gender-specificity into account in its reports, including by giving particular attention to the situation of women subjected to arbitrary detention;

3. Considers that the Working Group, within the framework of its mandate, and aiming still at objectivity, could take up cases on its own initiative;

4. Requests the Working Group to devote all necessary attention to reports concerning the situation of immigrants and asylum seekers who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy, and to include observations on this question in its report to the next session of the Commission on Human Rights;

5. Takes note of the decision taken by the Working Group not to apply the International Covenant on Civil and Political Rights to States which are not yet parties thereto and requests the Working Group, as announced by its Chairman/Rapporteur in the plenary of the fifty-third session of the Commission, not to apply other relevant international legal instruments to States which are not yet parties thereto;

6. Appeals, in this connection, to States which have not yet done so to consider acceding to or ratifying those international instruments, and to States which have entered reservations to consider withdrawing them;

7. Takes note also of the decision of the Working Group, as announced by its Chairman/Rapporteur in the plenary of the fifty-third session of the Commission, to give views rather than take decisions;

8. Requests Governments concerned to take account of the Working Group's views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken;

9. Encourages Governments concerned:

(a) To pay attention to the recommendations of the Working Group concerning persons mentioned in its report, who have been detained for a number of years;

(b) To take appropriate measures in order to ensure that their legislation in these fields is in conformity with the relevant international standards and the relevant international legal instruments applicable to the

States concerned, and not to extend states of emergency beyond what is strictly required by the situation, or to limit their effects;

10. Encourages all Governments to invite the Working Group to their countries in order that it may fulfil its mandate even more effectively;

11. Requests Governments concerned to give the necessary attention to the "urgent appeals" addressed to them by the Working Group on a strictly humanitarian basis and without prejudging its final conclusions;

12. Expresses its profound thanks to Governments which have extended their cooperation to the Working Group and responded to its requests for information, and invites all Governments concerned to demonstrate the same spirit of cooperation;

13. Welcomes the fact that the Working Group has been informed of the release of many individuals whose situation had been brought to its attention;

14. Requests the Secretary-General:

(a) To extend his assistance to Governments expressing the wish to receive it, as well as to special rapporteurs and working groups, with a view to ensuring promotion and observance of the guarantees relating to states of emergency that are laid down in the relevant international instruments;

(b) To ensure that the Working Group receives all necessary assistance, particularly in regard to staffing and resources needed to discharge its mandate, and notably with respect to field missions;

15. Decides to renew, for a three-year period, the mandate of the Working Group composed of five independent experts entrusted with the task of investigating cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law, with the relevant international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned;

16. Requests the Working Group to submit to it, at its fifty-fourth session, a report on its activities and on the implementation of this resolution, and include any suggestions and recommendations which would enable it to discharge its task in the best possible way, and to continue its consultations to that end within the framework of its terms of reference;

17. Decides to continue its consideration of the question at its fifty-fourth session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment".